

DOCKET NO: 282778US8X PCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF	:
SABINE TERRANOVA, ET AL.	: EXAMINER: VIRESH R. PATEL
SERIAL NO: 10/528,722	:
FILED: JULY 19, 2006	: GROUP ART UNIT: 2167
FOR: COPY PROTECTED DIGITAL DATA	: CONFIRMATION NUMBER: 6936

PETITION TO WITHDRAW HOLDING OF ABANDONMENT AND TO RESET DATE OF NON-FINAL OFFICE ACTION AND FOR REFUND OF FEES

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

Applicants, through counsel of record, respectfully request that the Notice of Abandonment issued on July 7, 2008 be withdrawn, and the period for response to the Non-Final Office Action dated October 18, 2007 be re-set for the above-identified application. This petition was originally filed on April 18, 2008, but was never acted on by the Office. The petition was originally submitted due to the fact that Applicant's Representative's "E-Office Action" notice for the Non-Final Office Action was never sent because of a crash of the PTO's servers. The facts concerning this matter are as follows:

Applicant's Representative is a participant in the Office's Beta "e-Office Action Program", wherein Applicant's Representative receives a once daily e-mail notification of all applications in which outgoing PTO correspondence has been issued in lieu of paper copies of the notices themselves. The Image File Wrapper for each indicated application is then checked and all outgoing notifications/actions are downloaded, which is registered by the

PTO as “Electronic Review” in the Transaction History of each application. It is noted that although PAIR indicates an “Electronic Review” occurred in this case on October 23, 2007, Applicant’s Representative confirmed with Tony Uranga, Program Analyst with SIRA that this is an error, no review having taken place by Applicant’s Representative.

During a Status Check, Applicant’s Representative checked Private PAIR, where the Office Action dated October 18, 2007 was discovered. After checking Applicant’s case management docketing system, as well as the physical firm file wrapper and determining that the action had not been received and docketed, Applicant’s Representative spoke with Tony Uranga, Program Analyst with SIRA (571-272-3416), who confirmed that an “E-Office Action” e-mail for the Non-Final Office Action in the instant application was never sent because of server failures at the PTO, even though the Transaction History for the case indicates the e-mail notification occurred on October 20, 2007. The attached copy of the “E-Office Action” e-mail received by Applicant’s Representative on October 20, 2007 clearly does not contain the serial number for the instant application. Further, the attached screen shots from PALM provided by Mr. Uranga show the discrepancy in the PTO’s records caused by the software problems at the PTO’s end: although there is an “EMAIL NOTIFICATION” dated 10/20/2007 in the attached PALM record, the E-Office Action Notice E-Mail clearly shows there is no matching serial number for the instant application.

At the original filing of this petition, the Office (Tony Uranga, Program Analyst with SIRA) indicated this Non-Final Office Action would be reset at the Office’s end without any action by Applicant’s Representative. On the evening of April 17, 2008, Applicant’s Representative were informed that the Office had determined that a petition would have to be filed, hence the original filing of this petition occurred on April 18th, the expiration date of the period for response to the Non-Final Office Action. Because Applicant’s Representative was further forced to file a Continuation Application with three months extensions of time in

order to maintain pendency of this application, it is also requested that all associated PTO fees be refunded.

Applicant's Representative further states that they were not aware of the Office Action prior to the aforementioned Status Check, nor was a paper copy of the same ever received via regular mail or any other means.

In light of the foregoing, it is requested that the Notice of Abandonment be withdrawn, the Office Action of October 18, 2007, be re-dated and the period for response be reset. The undersigned petitioner declares further that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Bradley D. Lytle
Attorney of Record
Registration No. 40,073

Janet Gardner

From: PAIR_eOfficeAction@uspto.gov
Sent: Saturday, October 20, 2007 9:04 AM
To: patentdocket; Oblonpat; Janet Gardner
Cc: PAIR_eOfficeAction
Subject: Private PAIR Correspondence Notification for Customer Number 22850

Oct 20, 2007 09:02:56 AM

Dear PAIR Customer:

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
940 DUKE STREET
ALEXANDRIA, VA 22314
UNITED STATES

The following USPTO patent application(s) associated with your Customer Number, 22850, have new outgoing correspondence. This correspondence is now available for viewing in Private PAIR.

The official date of notification of the outgoing correspondence will be indicated on the form PTOL-90 accompanying the correspondence.

Application Attorney Docket No.

1733351	306878US2
1733363	306882US2
1733454	306880US2
1733925	306889US2
1733952	306950US28
1734074	306979US2SRD
1734390	307012US2
1734446	306920US0
1734587	307117US0X
1735572	306803US2
1736296	307250US28
1736331	307311US30CIP
1736351	307298US0
1736861	307329US28
1742600	307870US2S CONT
1742972	305962US2 CIP
1743285	307339US0CONT
1754018	Q101683
1754141	307913US0X DIV
1763743	310273US2S DIV
1763874	309495US28DIV
1763931	307411US8DIV
1764426	310884US0CONT
1765054	310650US28DIV
1765080	310726US-28 DIV

10/2/11/2008

1766150	309388US0CONT
1766484	310236US-2 DIV
1766821	310773US2SCONT
1767121	310058US-2S DIV
1767215	310920US0CONT
1767734	310428US2DIV
1768543	310509US28
1768617	309329US0DIV
1770255	310383US28DIV

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10/528,722

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Select New Case	Application Data	Transaction History	Image File Wrapper	Continuity Data	Foreign Priority	Published Documents	Address & Attorney/Agent	As
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Transaction History

Date	Transaction Description
07-14-2008	Email Notification
07-14-2008	Mail Abandonment for Failure to Respond to Office Action
07-07-2008	Abandonment for Failure to Respond to Office Action
10-23-2007	Electronic Review
10-20-2007	Email Notification
10-17-2007	Withdraw Flagged for 5/25
10-18-2007	Mail Non-Final Rejection
10-16-2007	Flagged for 5/25
10-16-2007	Case Docketed to Examiner in GAU
10-15-2007	Non-Final Rejection
03-22-2005	Information Disclosure Statement considered
09-03-2007	Case Docketed to Examiner in GAU
01-31-2007	Case Docketed to Examiner in GAU
10-11-2006	Case Docketed to Examiner in GAU
10-05-2006	IFW TSS Processing by Tech Center Complete
10-05-2006	Case Docketed to Examiner in GAU
03-22-2005	Request for Foreign Priority (Priority Papers May Be Included)
03-22-2005	Information Disclosure Statement (IDS) Filed
03-22-2005	Information Disclosure Statement (IDS) Filed
03-22-2005	Preliminary Amendment
07-19-2006	371 Completion Date
08-09-2006	Application Dispatched from OIPE
08-10-2006	Notice of DO/EO Acceptance Mailed
07-19-2006	Additional Application Filing Fees
07-19-2006	A statement by one or more inventors satisfying the requirement under 35 USC 1
02-18-2006	Cleared by OIPE CSR
02-02-2006	Notice of DO/EO Missing Requirements Mailed
01-26-2006	Correspondence Address Change
03-22-2005	Initial Exam Team nn

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